

HOUSE BILL NO. 418

INTRODUCED BY KEANE, GALLUS, JACOBSON, RASER, GILLAN, KAUFMANN, VILLA, SMITH,
LASLOVICH, DOWELL, JENT, GALLIK, GRINDE, COHENOUR, DRISCOLL, WINDY BOY, LINDEEN,
JUNEAU, KITZENBERG

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DEFINITION OF "SUPERVISORY EMPLOYEE"
IN THE CONTEXT OF COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES; AMENDING SECTION
39-31-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-31-103, MCA, is amended to read:

"39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

(4) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(5) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(6) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(7) "Management official" means a representative of management having authority to act for the agency

1 on any matters relating to the implementation of agency policy.

2 (8) "Person" includes one or more individuals, labor organizations, public employees, associations,
3 corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

4 (9) (a) "Public employee" means:

5 (i) except as provided in subsection (9)(b), a person employed by a public employer in any capacity;
6 and

7 (ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor
8 practice or concerted employee action.

9 (b) Public employee does not mean:

10 (i) an elected official;

11 (ii) a person directly appointed by the governor;

12 (iii) a supervisory employee, as defined in subsection (11);

13 (iv) a management official, as defined in subsection (7);

14 (v) a confidential employee, as defined in subsection (3);

15 (vi) a member of any state board or commission who serves the state intermittently;

16 (vii) a school district clerk;

17 (viii) a school administrator;

18 (ix) a registered professional nurse performing service for a health care facility;

19 (x) a professional engineer; or

20 (xi) an engineer intern.

21 (10) "Public employer" means the state of Montana or any political subdivision thereof, including but not
22 limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation,
23 housing authority or other authority established by law, and any representative or agent designated by the public
24 employer to act in its interest in dealing with public employees. Public employer also includes any local public
25 agency designated as a head start agency as provided in 42 U.S.C. 9836.

26 (11) (a) "Supervisory employee" means ~~any an individual having who has significant and extensive~~
27 ~~authority, including the authority, without securing permission or approval from a higher authority, in the interest~~
28 ~~of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or other~~
29 ~~employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such~~
30 ~~action, the discipline imposed on another employee if the action taken in connection with the foregoing the~~

~~exercise of such the authority is not of a merely routine or clerical nature but requires the use of independent judgment is taken as the final, authoritative act.~~

~~———— (b) An employee, regardless of title, who has the authority to make a nonbinding recommendation that is not the final authority is not a supervisory employee, and an employee is not a supervisory employee unless the employee has the authority described in subsection (11)(a). The authority described in subsection (11)(a) is the only criteria that may be used to determine if an employee is a supervisory employee. The use of any other criteria, including any secondary test developed or applied by the national labor relations board or the Montana board of personnel appeals, is not valid if the criteria is used to determine if an employee is a supervisory employee under this section. HAVING AUTHORITY IN THE INTEREST OF THE EMPLOYER TO HIRE, TRANSFER, SUSPEND, LAY OFF, RECALL, PROMOTE, DISCHARGE, ASSIGN, REWARD, DISCIPLINE OTHER EMPLOYEES, HAVING RESPONSIBILITY TO DIRECT THEM, TO ADJUST THEIR GRIEVANCES, OR EFFECTIVELY TO RECOMMEND THE ABOVE ACTIONS, IF IN CONNECTION WITH THE FOREGOING THE EXERCISE OF THE AUTHORITY IS NOT OF A MERELY ROUTINE OR CLERICAL NATURE BUT REQUIRES THE USE OF INDEPENDENT JUDGMENT HAVING THE AUTHORITY ON A REGULAR, RECURRING BASIS WHILE ACTING IN THE INTEREST OF THE EMPLOYER TO HIRE, TRANSFER, SUSPEND, LAY OFF, RECALL, PROMOTE, DISCHARGE, ASSIGN, REWARD, OR DISCIPLINE OTHER EMPLOYEES OR TO EFFECTIVELY RECOMMEND THE ABOVE ACTIONS IF, IN CONNECTION WITH THE FOREGOING, THE EXERCISE OF THE AUTHORITY IS NOT OF A MERELY ROUTINE OR CLERICAL NATURE BUT REQUIRES THE USE OF INDEPENDENT JUDGMENT.~~

~~———— (b) AN EMPLOYEE DESIGNATED AS A WORKING FOREMAN IS NOT A SUPERVISORY EMPLOYEE. FOR THE PURPOSES OF THIS SUBSECTION, "WORKING FOREMAN" MEANS AN EMPLOYEE WHO DIRECTS THE WORK ACTIVITIES OF OTHER EMPLOYEES AND ALSO PERFORMS WORK ACTIVITIES IN CONJUNCTION WITH THOSE EMPLOYEES.~~

~~(B) THE AUTHORITY DESCRIBED IN SUBSECTION (11)(A) IS THE ONLY CRITERIA THAT MAY BE USED TO DETERMINE IF AN EMPLOYEE IS A SUPERVISORY EMPLOYEE. THE USE OF ANY OTHER CRITERIA, INCLUDING ANY SECONDARY TEST DEVELOPED OR APPLIED BY THE NATIONAL LABOR RELATIONS BOARD OR THE MONTANA BOARD OF PERSONNEL APPEALS, MAY NOT BE USED TO DETERMINE IF AN EMPLOYEE IS A SUPERVISORY EMPLOYEE UNDER THIS SECTION.~~

(12) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -